(1)

Supreme Court, U.S.
FILED

04 804 DEC 6 2004

OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

CHUNLI WU, DIAN DING, XIAOJIAN DING,

Petitioners,

v.

JOHN ASHCROFT,
U.S. Attorney General,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Chunli Wu
Dian Ding
Xiaojian Ding
1541 Ridgecrest St., #B
Monterey Park, CA 91754
323-261-5189

Questions Presented For Review

Did the United States Court of Appeals err by denying Petitioner's Petition for Review based on the following erroneous findings: (1) that the Immigration Judge did not violate Petitioners' Fifth Amendment right to Due Process by admitting hearsay evidence and by denying their motion to continue their hearing; (2) that the Immigration Judge did not err by denying their application for asylum based on lack of credibility; and (3) whether the new facts of the birth of Petitioners' new United States Citizen child warrants remanding this case for further consideration of their asylum application?

Table of Contents

	Page
Questions Presented for Review	i
Opinions Below	1
Statement of Jurisdiction	1
Constitutional Provisions At Issue	1
Statutory Provisions At Issue	2
Statement of the Case	2
Reasons For Granting The Writ	5
Conclusion	11

Appendix

Memorandum Opinion of the United States Court of Appeals for the Ninth Circuit	App.1
Judgment of the United States Court of Appeals for the Ninth Circuit	App.4
Decision of the Board of Immigration Appeals	App.5
Oral Decision and Order of the Immigration Judge	App.8
Order of the Immigration Judge	App.29

Table of Authorities

Page

Cases

Aguilera-Cota v. INS, 914 F.2d 1375 (9th Cir. 1990)..... 10
Campos-Sanchez v. INS, 164 F.3d 448 (9th Cir. 1999)..... 6
Castillo-Villagra v. INS, 972 F.2d 1017 (9th Cir. 1992)..... 6
Colmenar v. INS, 210 F.3d 967 (9th Cir. 2000)..... 6
Cunanan v. INS, 856 F.2d 1373 (9th Cir. 1988)..... 7
Damaize-Job v. INS, 787 F.2d 1332 (9th Cir.1986)..... 10
Espinoza v. INS, 45 F.3d 308, 310 (9th Cir. 1995)..... 6
Jacinto v. INS, 208 F.3d 725 (9th Cir. 2000)..... 6
Ladha v. INS, 215 F.3d 889 (9th Cir. 2000)..... 6
Martinez-Sanchez v. INS, 794 F.2d 1396 (9th Cir. 1986)..... 10
Matter of X-P-T, Interim Decision 3299 (BIA 1996)..... 9
Nasseri v. INS, 34 F.3d 723 (9th Cir. 1994)..... 10
Osorio v. INS, 99 F.3d 928 (9th Cir. 1996)..... 9, 10
Rojas-Garcia v. Ashcroft, 339 F.3d 814 (9th Cir. 2003)..... 7, 8

Sanchez-Cruz v. INS, 255 F.3d 775
(9th Cir. 2001)..... 7
Sarvia-Quintanilla v. INS, 767 F.2d 1387
(9th Cir. 1985)..... 6
Turcios v. INS, 821 F.2d 1396
(9th Cir. 1987)..... 10

Constitutional Provisions

Fifth Amendment..... i, 1, 6

Statutory Provisions

8 U.S.C. § 1101(a)(42)(A).....9
8 U.S.C. § 1158.....9
8 U.S.C. § 1229a(b)(4)(B)..... 6
8 U.S.C. § 1252(b) 3
Immigration and Nationality Act ("INA"),
§ 208(a)..... 9
INA § 101(a)(42)(A)..... 9

Opinions Below

The unpublished Memorandum Opinion of the United States Court of Appeals for the Ninth Circuit dated September 8, 2004, is set forth in the Appendix at page 1.

The unpublished Judgment of the United States Court of Appeals for the Ninth Circuit dated September 8, 2004, is set forth in the Appendix at page 4.

The unpublished Decisions of the Board of Immigration Appeals dated January 29, 2003, are set forth in the Appendix at page 5.

The unpublished Oral Decision and Order of the Immigration Judge of the U.S. Immigration Court dated December 5, 2000, is set forth in the Appendix at page 8.

The unpublished Memorandum of Decisions and Orders of the U.S. Immigration Court dated December 5, 2000, are set forth in the Appendix at page 29.

Statement of Jurisdiction

The judgment of the United States Court of Appeals was entered on September 8, 2004. This Court has jurisdiction to review the judgment of the Court of Appeals pursuant to 28 U.S.C. § 1254(1).

Constitutional Provisions at Issue

The question presented for review implicates the following provision of the Constitution of the United States:

Amendment V

No person shall be . . .deprived of life, liberty, or property without due process of law . . . .

Statutory Provisions at Issue

The question presented for review implicates the following statutory provision:

Section 101(a)(42)(A), Immigration and Nationality Act (8 U.S.C. § 1101(a)(42)(A)).

> For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion . . . .

Statement of the Case

This case involves a judgment issued by the United States Court of Appeals for the Ninth Circuit on September 8, 2004, denying Petitioners' Petition for Review of an Order of Removal issued by an Immigration Judge and affirmed by the Board of Immigration Appeals.

Petitioner Chunli Wu filed an application for asylum with the Immigration and Naturalization Service ("INS") on August 6, 1999. (Chunli Wu's son, Dian Ding, and her husband, Xiaojian Ding, were included with her application.) After INS rejected the application Petitioners were referred to the Immigration Court for removal proceedings, at which time Petitioner renewed her application for asylum.

A hearing was held before an Immigration Judge on December 5, 2000, in Los Angeles, at which time testimony was taken and evidence received. At the conclusion of the

hearing, the Immigration Judge rendered an oral decision denying the application for asylum and for withholding of exclusion and deportation. Petitioners thereafter appealed to the Board of Immigration Appeals, which issued a decision on January 29, 2003, affirming the decision of the Immigration Judge without opinion. Petitioners then filed a timely Petition for Review with the United States Court of Appeals on February 21, 2003. The United States Court of Appeals had jurisdiction to review the decision of the Board under 8 U.S.C. § 1252. On September 8, 2004, the Court of Appeals issued a decision denying the Petition for review.

Petitioners alleged that the Immigration Judge abused her discretion and violated their right to due process in conducting the hearing and erred in denying their application for asylum.

Petitioner Chunli Wu, a citizen of The People's Republic of China, entered the United States on January 18, 1999. She filed her application for asylum on August 6, 1999, alleging that she would be persecuted if she returned to China due to her involvement in illegal religious activities, and also due to her violation of China's one-child policy.

The government of China continues to enforce its intrusive family planning policies, highlighted by the "one-child policy." Those who observe the policy are rewarded financially and those who do not are punished. The consequences of violation include fines, demotion, withholding of social services, and other punishments. Chinese officials have acknowledged that forced abortions and sterilizations have occurred and continue to occur in some areas.

In 1995, Petitioner became pregnant with her second child. When her superiors at her work unit

discovered she was pregnant, they asked her to attend one-child policy training, but she refused. After she refused the third time four people forced her to go to the hospital and she had an abortion. In addition petitioner was fined 5,000 RMB for her refusal to voluntarily have an abortion.

In 1994 Petitioner joined an underground Christian house church. At first Petitioner was just a follower, but later she became an organizer. In May of 1998 Petitioner was arrested and detained for 15 days for being an organizer of an illegal house church. She was released after her family paid a bail of 10,000 RMB. After her release Petitioner was required to report to the authorities on a weekly basis.

At the time of her arrest and detention, Petitioner's husband was in the United States in a training program for his job. Petitioner obtained an exit visa and left China in January 1999 to join her husband in the United States. Petitioner put false information on the visa application regarding where she worked because, in her words, "[o]therwise, I cannot get out."

Petitioner submitted her application for asylum to INS in August 1999, but it was rejected and she and her husband and son were referred to Immigration Court for removal proceedings.

At the merits hearing on Petitioner's application for asylum, the Court admitted a letter over Petitioner's objection from Jim Levy, Consul at the American Embassy in Beijing. This letter was sent to INS District Counsel in Los Angeles in response to a request sent by Petitioner's counsel for authentication of documents. The documents sought to be authenticated were purportedly official certificates evidencing Petitioner's abortion and her detention in China. The letter characterizes the documents sent for authentication as "fantasy" documents, and the

official seals included therein as "poor quality counterfeits." This letter was sent on June 28, 2000, but was not provided to counsel for Petitioner until the date of the hearing, December 5, 2000.

Counsel for Petitioner requested a continuance of the hearing so that he could investigate the matter regarding the documents and the letter, but the Immigration Judge refused this request. Petitioner testified that the documents were obtained for her, but she did not know they were fraudulent.

In her decision denying Petitioner relief from removal, the Immigration Judge found Petitioner not credible based on her finding that Petitioner had submitted false documents.

Petitioners raised the due process and abuse of discretion issues in their appeal to the Board of Immigration Appeals and in their petition for review to the Court of Appeals.

Reasons for Granting the Writ

This Court should grant the writ of certiorari and review the decision of the Ninth Circuit Court of Appeals in this case. The Court of Appeals found that the Immigration Judge's denial of asylum based on an adverse credibility determination was supported by substantial evidence. This decision, however, was based on a gross violation of Petitioners' due process rights. The Immigration Judge admitted surprise hearsay evidence, failed to grant a continuance in order for Petitioners' counsel to investigate the evidence, then based her adverse credibility determination on the surprise evidence. This action constitutes an abuse of discretion and a violation of Petitioners' due process rights.

A. Denial of Request for Continuance

The Fifth Amendment guarantees due process in Immigration proceedings. *Jacinto v. INS*, 208 F.3d 725, 727 (9th Cir. 2000) (citing *Campos-Sanchez v. INS*, 164 F.3d 448, 450 (9th Cir. 1999)). "An alien who faces deportation is entitled to a full and fair hearing of his claims and a reasonable opportunity to present evidence on his behalf." *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000). A full and fair hearing requires that the alien's claim is "evaluated on its own merits to determine whether the alien's factual support and concrete evidence are sufficient" to meet her burden of proof. *Sarvia-Quintanilla v. INS*, 767 F.2d 1387, 1392 (9th Cir. 1985); *see also Castillo-Villagra v. INS*, 972 F.2d 1017, 1023 (9th Cir. 1992) (finding error when the BIA failed to consider alien's asylum application on an individualized basis).

While hearsay is not necessarily precluded from immigration proceedings, the admissibility of documentary evidence is governed, like immigration proceedings as a whole, by the Fifth Amendment's Due Process Clause. *See Ladha v. INS*, 215 F.3d 889, 904 (9th Cir. 2000) (identifying the due process guarantee to "a full and fair hearing . . . and a reasonable opportunity to present evidence" as the standard for the admissibility of evidence in the immigration context). The due process standard is supported by the statutory scheme governing immigration proceedings, which provides aliens with "a reasonable opportunity to examine the evidence against [them], to present evidence on [their] own behalf, and to cross-examine witnesses presented by the Government." 8 U.S.C. § 1229a(b)(4)(B) (2000). Evidence may be admitted so long as it is probative and if its admission would be "fundamentally fair." *See Ladha*, 215 F.3d at 904 (examining *Espinoza v. INS*, 45 F.3d 308, 310, 311 (9th

Cir. 1995)); *see also Cunanan v. INS*, 856 F.2d 1373, 1374 (9th Cir. 1988) (explaining that the test for admissibility in deportation proceedings is "whether the hearsay statement is 'probative' and whether its admission is 'fundamentally fair.").

The standard of review of due process violations in deportation proceedings is a de novo review. *Sanchez-Cruz v. INS*, 255 F.3d 775, 779 (9th Cir. 2001).

In *Rojas-Garcia v. Ashcroft*, 339 F.3d 814 (9th Cir. 2003), the Ninth Circuit rejected the petitioner's claim that he was denied a fair hearing because the Immigration Judge relied on hearsay evidence brought in through the testimony of two government agents. In rejecting this claim, the Court recognized that hearsay is admissible, so long as its admission is "fundamentally fair":

> Here, the testimony of Agent Holguin and Detective Crutcher was probative and fair. Agent Holguin and Detective Crutcher testified about their personal knowledge of Rojas-Garcia during the course of an undercover drug operation. Rojas-Garcia had the opportunity to cross-examine both officers. See id. at 311 (noting that an alien must have a reasonable opportunity to cross-examine government witnesses). And, even though Agent Holguin refreshed his memory with a police report written by Detective Crutcher, Rojas-Garcia was able to confront Crutcher during cross examination. Moreover, the INS was not required to produce testimony from the confidential informant who participated in the drug negotiation and allegedly provided

> information to Detective Crutcher. Testimony by the confidential informant was not necessary to ensure a fundamentally fair hearing given that Crutcher personally monitored the conversations between the informant and Rojas-Garcia through body wires and, in one instance, videotape. Despite Rojas-Garcia's assertions that he was denied a fair hearing, Rojas-Garcia does not cast doubt on the probative value or fairness of the evidence presented; he does not present any contrary evidence to the testimony of the officers or the police report.

339 F.3d 814, ___ (10368-10369)

Unlike *Rojas-Garcia*, here Petitioner did not have the opportunity to cross-examine the government's witness through which the challenged hearsay was introduced. Neither did Petitioner have the opportunity to present any contrary evidence to challenge the conclusion made by the U.S. Consul regarding the authenticity of the supporting documents. Petitioner's counsel did not have an opportunity to investigate the matter or to present any contrary evidence because he did not know about the letter until the day of the hearing. When counsel asked for a continuance to speak to the Consul and to investigate his conclusions, the Immigration Judge refused this request. Finally, the Immigration Judge relied on this challenged hearsay to conclude that Petitioners were not credible and to deny their applications for relief. This is not a "fundamentally fair" proceeding, but rather was a violation of Petitioners' due process rights.

B. Denial of Asylum Claim

1. Eligibility for Asylum

To qualify for political asylum under the Immigration and Nationality Act ("INA"), an alien must demonstrate a "well-founded fear of persecution." INA § 208(a), INA § 101(a)(42)(A); 8 U.S.C. §§ 1158(a), 1101(a)(42)(A). In 1996 the INA was amended to add the following:

> For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, **shall be deemed to have been persecuted on account of political opinion** . . . .

INA § 101(a)(42)(A); 8 U.S.C. § 1101(a)(42)(A)(emphasis added).

A person who has suffered from past persecution is presumed to have a well-founded fear of future persecution. *Osorio v. INS*, 99 F.3d 928 (9th Cir. 1996). This presumption may be rebutted by a showing that country conditions have changed so that the applicant would no longer have a well-founded fear of future persecution. *Matter of X-P-T*, Interim Decision 3299 (BIA 1996). If the presumption is not rebutted, the petitioner is eligible for asylum. *Osorio, supra*, 99 F.3d 928.

2. Standard of Review

The standard of review for credibility determinations by the Board is a substantial evidence

standard. *Osorio*, supra, 99 F.3d 928. Courts accord substantial deference to credibility findings, but these findings must be supported by "specific, cogent reasons." *Turcios v. INS*, 821 F.2d 1396, 1399 (9th Cir. 1987). The reasons offered must be "substantial and must bear a legitimate nexus to the finding." *Aguilera-Cota v. INS*, 914 F.2d 1375, 1381 (9th Cir. 1990). A Court is also bound to consider "whether or not the reasons given are 'valid grounds' for determining that a witness is not credible." *Nasseri v. INS*, 34 F.3d 723, 726 (9th Cir. 1994). In cases in which "the petitioner's testimony is the principle source of evidence, it is especially important 'that the credibility determination be based on appropriate factors.'" *Id.* (citing to *Aguilera-Cota*, 914 F.2d at 1381.) Trivial errors by an asylum applicant do not constitute "a valid ground upon which to base a finding that an asylum applicant is not credible." *Martinez-Sanchez v. INS*, 794 F.2d 1396, 1400 (9th Cir. 1986)(quoting *Damaize-Job v. INS*, 787 F.2d 1332, 1337 (9th Cir. 1986)).

3. Petitioner's Credibility

The Immigration Judge erred by concluding that petitioner's account was not credible. Petitioner testified that she was forced to have an abortion for violating China's one-child policy. She also testified that she had been arrested and detained for 15 days for her actions in organizing illegal underground church services, and that after her release, she was harassed and persecuted at her work. She presented evidence of her reasonable fear of future persecution should she be forced to return to China. Petitioner's husband corroborated her testimony.

Petitioners submit that the Immigration Judge's determination that they were not credible was influenced by her improper admission of the hearsay letter and such determination should be reversed by this Court.

In this case, Petitioner presented sufficient evidence to establish she is qualified for asylum and withholding of removal as a victim of past persecution on account of her religious activities and as a result of her forced abortion. Petitioners provided the Immigration Judge with testimony regarding the persecution she suffered as a result of her religious activities and the future persecution she feared if forced to return to China.

The United States Court of Appeals, like the Board of Immigration Appeals, found that the Immigration Judge did not engage in an abuse of discretion on this issue. This Court should reverse the United States Court of Appeals' decision as to this issue.

C. New Facts of Petitioner's U.S. Citizen Child

On August 20, 2004, Petitioner Chunli Wu gave birth to daughter Annie Ding in Monterey Park, California. Petitioner and her husband now have two children, a clear violation of China's one-child policy. If Petitioners are forced to return to China they will be subject to persecution on account of this violation, they will be unable to obtain employment and housing, and their new U.S. Citizen child will be denied the rights of Chinese citizens. This new fact justifies remanding this case to the Board of Immigration Appeals for reconsideration of their claim to asylum.

Conclusion

For the reasons set forth above, Petitioners Chunli Wu, Dian Ding, and Xiaojian Ding respectfully pray that this Court grant a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

Chunli Wu
Dian Ding
Xiaojian Ding
1541 Ridgecrest St., #B
Monterey Park, CA 91754
323-261-5189

APPENDIX

FILED
SEP 8 2004

CATHY A. CATTERSON,
CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHUNLI WU; DIAN DING; XIAOJIAN DING,	)	No. 03-70781
	)	Agency Nos.
Petitioners,	)	A75-654-696
	)	A75-654-697
v.	)	A75-654-698
	)	
JOHN ASHCROFT, Attorney General,	)	MEMORANDUM*
	)	
Respondent.	)	

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted August 25, 2004**
San Francisco, California

Before: SCHROEDER, Chief Judge, GOODWIN, and TASHIMA, Circuit Judges.

---

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Chunli Wu, a native and citizen of the People's Republic of China, petitions for review of the streamlined decision of the Board of Immigration Appeals, which affirmed without opinion the decision of the Immigration Judge (IJ) denying her claims for asylum, withholding of removal, and protection under the Convention Against Torture (CAT).[1] We deny the petition.[2]

The denial of petitioner's asylum claim was based on an adverse credibility determination, the key component of which was that petitioner had submitted a counterfeit

---

1. Petitioner's husband, Xiaojian Ding, and her son, Dian Ding, also seek review of the same decision. Petitioner is the principal asylum applicant and the claims of her husband and son are derivative of her claim. *See* 8 C.F.R. §208.21. For convenience, we refer to all three as "petitioner."

2. The facts and prior proceedings are known to the parties and we do not recite them here.

document in support of her claim. Based on the report of a U.S. consular official, the IJ found that Wu's certificates purporting to confirm that she was made to undergo a forced abortion were "poor quality counterfeits." Those certificates, obviously, go to the heart of her claim. *See Desta v. Ashcroft*, 365 F.3d 741, 745 (9th Cir. 2004). Thus, we conclude that the IJ's rejection of Wu's asylum claim on the basis of lack of credibility is supported by substantial evidence. *Id.*

Wu also contends that she was deprived of due process at her removal hearing because of the surprise introduction of the consular official's letter attesting to the counterfeit nature of the abortion certificates. The IJ granted Wu and her counsel a one-hour recess to discuss the letter, but denied a longer continuance. We conclude that it was neither an abuse of discretion nor a due process violation to deny a longer continuance, primarily because there was no showing of prejudice. *See Jacinto v. INS*, 208 F.3d 725, 727028 (9th Cir. 2000). The chief effect of the letter was to call Wu's testimony into question. However, there were ample other grounds, in addition to the letter, which supported the IJ's lack-of-credibility finding.[3] Moreover, Wu made no specific showing of what a longer recess would have accomplished that would have made a difference to the outcome of the proceeding.

PETITION FOR REVIEW DENIED.

---

3. We also reject Wu's hearsay objection. Formal rules of evidence do not apply to removal proceedings, *Jacinto*, 208 F.3d at 727-28, and hearsay documents are admissible, as long as they are probative and admitting the document is "fundamentally fair." *Cunanan v. INS*, 856 F.2d 1373, 1374 (9th Cir. 1988).

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHUNLI WU; et al.	)	No. 03-70781
	)	Agency Nos.
Petitioners,	)	A75-654-696
	)	A75-654-697
	)	A75-654-698
	)	
v.	)	
	)	
JOHN ASHCROFT,	)	
Attorney General,	)	**JUDGMENT**
	)	
Respondent.	)	
	)	

Upon Petition for Review of a Decision of the
Board of Immigration Appeals

This cause came on to be heard on the Transcript of the Record from the Immigration and Naturalization Service and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this court that the petition for review of the said decision of the Board of Immigration Appeals in this cause be, and hereby is **DENIED**.

Filed and entered Wednesday, September 08, 2004

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A75-654-696-Los Angeles

Date:
JAN 29 2003

In re: WU, CHUNLI

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 3.1(e)(4).

s/ Frederick D. Hess
FOR THE BOARD

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A75-654-697-Los Angeles

Date: **JAN 29 2003**

In re: DING, DIAN

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 3.1(e)(4).

s/ Frederick D. Hess
FOR THE BOARD

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A75-654-698-Los Angeles

Date: **JAN 29 2003**

In re: DING, XIAOJIAN

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 3.1(e)(4).

s/ Frederick D. Hess
FOR THE BOARD

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
Los Angeles, California

File Nos. A 75 654 696
A 75 654 697
A 75 654 698

December 5, 2000

In the Matters of

CHUNLI WU,	)	IN REMOVAL
DIAN DING, and	)	PROCEEDINGS
XIAOJIAN DING,	)	
Respondents	)	

CHARGE: Section 237 (a) (1) (B) of the Immigration and Nationality Act.

APPLICATIONS: Asylum, withholding of removal, voluntary departure, relief under the U.N. Convention Against Torture Act.

ON BEHALF OF RESPONDENTS:

Sanford H. Perliss
Attorney at Law

ON BEHALF OF SERVICE:

Kathleen Rojes
Assistant District Counsel

ORAL DECISION AND ORDER OF THE IMMIGRATION JUDGE

The lead respondent, Chun Wu, is a 36-year-old married female, native and citizen of the People's Republic of China. The second respondent, Dian Ding, is an 8-year-old single male, native and citizen of the People's Republic of China. The third respondent, Xiaojian Ding, is a 37-year-old married male, native and citizen of the People's Republic of China. The United States Immigration and Naturalization Service (INS) has brought these removal proceedings against the respondents pursuant to the authority contained in Section 240 of the Immigration and Nationality Act (the Act). Proceedings were commenced with the filing of the Notice to Appear with the Immigration Court. The Notice to Appear was marked into the record as Exhibit 1.

The lead respondent admits as alleged in the Notice to Appear that she entered the United States with her son, Dian Ding, on or about January 18, 1999, at or near Los Angeles, California. The third respondent in the case, Xiaojian Ding, alleges that he entered the United States on or about February 2, 1998, at or near Los Angeles, California. All three respondents further concede that they are removable as charged under Section 237 (a) (1) (B) of the Immigration and Nationality Act in that after admission as non-immigrants under Section 101 (a) (15) of the Act, they have all remained in the United States for a time longer than permitted.

On the basis of the respondents' admissions, the Court finds that the respondents' removability has been established.

The respondent declined to designate a country of removal and the People's Republic of China was directed. The lead respondent applied for relief from removal in the form of asylum under Section 208 (a) of the Act. The other two respondents were included in her application. Applications for asylum shall also be considered as applications for withholding of removal under Section 241 (b) (3) of the Act. The respondents request voluntary departure under Section 240B (b) of the Act in the alternative, as well as relief under the U.N. Convention Against Torture Act pursuant to 8 C.F.R. 208.16.

The lead respondent in this case has satisfied the requirement of showing by clear and convincing evidence that she applied for asylum within one year of her arrival. At today's hearing, the respondent was advised of the consequences of knowingly filing a frivolous application for asylum pursuant to 8 C.F.R. 208.18.

The respondent's Form I-589, application for asylum, is contained in the record as Exhibit 2. Her statement supporting her application was marked into the record as Exhibit 2A. The respondent submitted documents in support of her application. They were marked into the record as Exhibit 3. Some of respondent's documents were sent to the American Embassy in Beijing and the response letter from the embassy was marked into the record as Exhibit 4. The respondent, through her counsel, sent a letter to the embassy in Beijing requesting authentication of certain documents and the embassy responded to the respondent's attorney explaining the authenticating process. That was marked into the record as Exhibit 5. The actual request for authentication was

marked into the record as Exhibit 6. The Department of State Country Report on Human Rights Practices for China for 1999 was marked into the record as Exhibit 7A. The Department of State Report on International Religious Freedom was marked into the record as Exhibit 7B. The Department of State Profile on Asylum Claims and Country Conditions was marked into the record as Exhibit 8. The lead respondent had made several applications for a visa at the American Embassy and those three applications were marked into the record as 9A, 9B and 9C, based on the dates that they were filed.

FACTS

The evidence at the hearing consisted of the respondent's written asylum application, her testimony, the testimony of her spouse, the other adult respondent in this case, the statement attached to the asylum application, the Department of State Reports and Profiles, and the testimony of the respondent's husband, a third, the second adult in this case.

Written Application

In the written application of the lead respondent, she said that she was seeking asylum on the grounds of religion and political opinion. Her application indicates that she was an organizer of underground churches and for that she was persecuted and also she underwent a forced abortion, which was, and she is opposed to the family planning policy of the People's Republic of China. The lead respondent alleges in her application that if she is returned to the People's Republic of China she could be arrested. The lead respondent indicated in her application that she departed China on or about January 18, 1999, and arrived in the United States on January 18, 1999.

Testimony

The respondents testified at the hearing as follows. The first respondent, Chun Wu, testified that she was persecuted in China because she was an organizer of underground churches and because of her activity she was detained for 15 days and she was not given food, she was interrogated and she was eventually bailed out by her family. She testified that after being bailed out, she had to report weekly to the authorities, she was constantly under surveillance and her mail was checked. She testified that when she arrived in the United States, she continued her religious activities and she sent materials from the United States to the People's Republic of China, religious materials to China and that these materials were confiscated by the authorities.

With respect to the coercive family planning policy, the respondent testified that sometime in 1995 she was approximately two months pregnant, her work unit discovered that she was pregnant and forced her to have an abortion. She testified that four people grabbed her and took her to the place where the abortion was to occur, that two of the people held her down while the abortion took place. On cross-examination, the respondent testified that her husband came to the United States on February 2, 1998; that she did not accompany her husband because her church needed her. She again testified that she underwent a forced abortion on June 12, 1995. She testified that she was required to attend family planning seminars, but she refused to attend these seminars. She testified that she was fined 5,000 RMB because of the pregnancy and she was also forced to undergo an abortion. She testified that she was fined because that was the penalty for having a second pregnancy. She testified that after having the abortion, the doctor gave her an abortion certificate. She testified that

she was presented this abortion certificate in person and that she kept it in her home in her closet.

The respondent was asked if she left China because of religious reasons and respondent testified that she did not leave China because of religious reasons. She testified that she joined the underground church in 1994 and her husband did not join. When asked why she joined an underground church, the respondent replied, because only God can protect common people. She testified that she was arrested on or about May 6, 1998. She was at home on a lunch break. She testified that she did not know that organizing an underground church was an illegal activity. She testified that she was eventually released after her family paid a bail of 10,000 RMB. The respondent further testified that her husband was baptized here in the United States on or about June 20, 2000; that she and her husband currently attend a Mormon church or Church of Jesus Christ of the Latter Day Saints. Hereinafter the Court will refer to the church as the Mormon church. The respondent testified that she attended several churches after arriving in the United States and decided on the Mormon church as her church of preference.

The second witness to testify was the lead respondent's husband, Xiaojian Ding, file number A 75 654 698. Respondent in this case testified that he and his wife had one child, a son, and that he wanted to have a daughter. He testified that when his son was three years old, which was in 1995, his wife became pregnant again and that his wife was forced to have an abortion and the abortion was probably in May of 1995. This witness testified that he was in China in 1995, that he was working as an auditor for the company of Price Waterhouse. He testified that the company sent him to the United States in 1998 to receive further training in accounting. He testified that he also violated the family planning policy of the People's Republic

of China as the father of the infant who was aborted. He testified that he, himself, was never penalized for violating the family planning policy. He testified that his wife was penalized and that she paid a fine of 5,000 RMB. He testified that he and his wife lived in the same house and that they work in the same city, however, the work unit of the wife never notified his work unit that he had violated the family planning policy. He testified that in this situation because his wife was pregnant, the woman is the one who gets penalized and that he was never penalized because of his wife's pregnancy. He testified that he was the father of the aborted child.

This witness also testified that he entered the United States February 1998 and that he completed his training in accounting in July of 1999. He testified that he was expected to return to China and resume his position at Price Waterhouse, however, he did not return to the People's Republic of China because of his wife. He testified that he wanted to return because he had a good job. He testified that he did not have any problems with the authorities before he left China. He did not have problems because of religion or because of family planning issues. He testified that before coming to the United States, he did not follow any religion. He testified that since he his arrival in the United States, he has joined the Mormon church because of his wife. This respondent was asked if he had returned to China in July of 1999 would he have resumed employment and the respondent replied he probably would have been able to resume his employment in July of 1999 had he returned after his training. This respondent, again, testified that his wife worked for the Fresh Water Fishing Company before she came to the United States. The husband also testified that their religious services were held at the home belonging, or which he and his wife lived. He testified that

he did not know that house churches were illegal. He testified that his wife had no problems based on her religious beliefs while he was in China. He testified that he learned of her problems after he arrived in the United States and that he learned of these problems after receiving a telephone call from his mother-in-law, that is the mother of the respondent's wife. He testified that the mother of his wife called him in May of 1998 to inform him that his wife had been detained. He was asked why he did not leave the United States to join his wife after learning that she was in detention and the husband replied that, he first replied that he did not believe his wife had been detained and that was why he did not return. Then he replied that he did not return because he had to finish his training and he also wanted to understand what was going on. The husband also testified that after his wife was released from detention, she returned to her work unit. The respondent was then shown the certificates that his wife had submitted in support of her application. One certificate was related to her detention, the other was related to the abortion. The respondent husband testified that he first saw the detention certificate here in the United States. He could not recall exactly when he first saw the abortion certificate, even though he was in China at the time of the abortion. He testified that he did not see it at that time, it was given to his wife and, again, he was unclear as to the exact time that he saw the abortion certificate. That basically sums up the testimony of both respondents.

STATEMENT OF THE LAW

The burden of proof is on the respondents to establish that they are eligible for asylum or withholding of removal.

To qualify for asylum pursuant to Section 208 of the

Act, the respondents must show that he or she is a refugee within the meaning of Section 101 (a) (42) (A) of the Act. The definition of refugee includes a requirement that the respondents demonstrate that he or she suffered past persecution or that he or she has a well-founded fear of future persecution in the country of nationality or last habitual residence on account of race, religion, nationality, membership in a particular social group or political opinion. The aliens must show that they have a subjective fear of persecution and that the fear has an objective basis. The objective basis of a well-founded fear of future persecution is described in the regulations as a reasonable possibility of actually suffering such persecution if the alien were to return to his home country. The objective component must be supported by credible, direct and specific evidence in the record. The alien must also be both unable and unwilling to return to or avail himself of protection of his home country because of such fear. Finally, an applicant must also establish that he merits asylum in the exercise of discretion.

The regulations further provide that in evaluating a claim of future persecution, the Immigration Judge does not have to require the alien to provide evidence he would be singled out individually for persecution if the alien establishes that there is a pattern or practice in his home country of persecution of groups of persons similarly situated to the applicant on one of the five enumerated grounds and that the alien is included or identified with such group.

The regulations also note with respect to past persecution that an alien who establishes he suffered past persecution within the meaning of the Act shall be presumed also to have a well-founded fear of future persecution. This presumption may be rebutted if a

preponderance of the evidence establishes that since the time the persecution occurred, conditions in the applicant's home country have changed to such an extent that the applicant no longer has a well-founded fear of being persecuted if he were to return. An alien who establishes past persecution but not ultimately a well-founded fear of future persecution will be denied asylum (indiscernible) reasons for not returning him which arise under the severity of the past persecution.

To qualify for withholding of removal under Section 241 (b) (3) of the Act, respondents' facts must show a clear probability that his life or freedom would be threatened in the country directed for removal on account of one of the five enumerated grounds. This means the respondents' facts must establish it is more likely than not that he or she would be subject to persecution for one of the grounds specified.

To qualify for relief under the U.N. Convention Against Torture, the respondent must show or prove that it is more likely than not that he or she would be tortured if removed to the proposed country of removal. See 8 C.F.R. 208.16.

The well-founded fear standard required for asylum is more generous than the clear probability standard of withholding of removal. The Court, therefore, must first apply the more liberal well-founded fear standard when reviewing the respondents' application because if he or she fails to meet the test, it follows that he necessarily would fail to meet the clear probability test required for withholding of removal.

COURT'S ANALYSIS AND FINDINGS

Before beginning the hearing or as part of the hearing when the documents were being submitted to the

Court to be marked into the record, the Service submitted a letter from the American Embassy signed by the consul, Jim Levy. This letter was in response to a request made by the attorney for the respondent, Sanford Perliss, who wrote to Mr. Levy asking him to authenticate certain documents the respondent was submitting in support of her application for asylum. The documents that were sent to Mr. Levy for authentication consisted of the document relating to the respondent's detention and the document relating to the forced abortion. The Court has earlier read the contents of the letter, but for the record, for the decision, the Court will again read the letter into evidence, into the decision. The letter was marked into the record as Exhibit 4. The Court will summarize the letter because it is already in the transcript. Mr. Levy, consul, indicates, our office has determined that these two documents are not printed or completed in the usual format and that the seals of the Haidian District police and Haidian District hospital are poor quality counterfeits. The letter also goes on to state in the second paragraph that the consul, Jim Levy, was sending, along with this letter, a copy of the lead respondent's non-immigrant visa applications. He states that Ms. Wu was issued a J-2 non-immigrant visa on January 5, 1999, so that she could join her husband, Mr. Xiaojian Ding, in a research program in the United States. The letter goes on to say that prior to her travel, Ms. Wu was favorably employed at the Debao International Travel Service. If she had a record of persecution in China, it is not conceivable that she and her son, Dian Ding, would have been issued a passport and exit permit for the purpose of joining the principal applicant in the United States. The respondent, when answering the Court's questions regarding her employment, informed the Court that she did not work for the Debao International Travel Service as

indicated in her application for visas. Now there were three applications submitted for a visa. They were marked into the record as Exhibits 9A, B and C, and in each one of those visa applications, the respondent indicated that she was employed by the Debao International Travel Service. The Court would believe that the respondent was asked to present proof of employment when she applied for the visa. The respondent, in Court, admitted that she gave false information in her visa application. She insisted that her real employment was with the Fresh Water Fishing Company and not the International Travel Agency. She informed the Court that a friend completed the application and the friend told her to write down that she was employed by the travel service, the International Travel Service. So we have a situation where the respondent admits that she provided false information to the American Government in order to receive a visa to come to the United States. It is not clear why she would lie about her place of employment. If she were in fact employed, she could easily have written down the Fresh Water Fish Company, but the respondent in this case has insisted that the false information was the information in the visa application and not, and that the truthful information was in her asylum application.

The Court also advised the respondent of the consequences of filing a frivolous asylum application. The Court went over the definition of frivolous application, explaining very carefully to the respondent that a frivolous application is an application for asylum which contains statements or responses to questions that are deliberately fabricated. To make sure the respondent understood this definition, the Court allowed the respondent to converse with her attorney in the presence of the Mandarin interpreter to make sure she understood what a frivolous application was and the consequences of filing a frivolous

application. The respondent was then asked again to swear to the truth of the application and respondent insisted that the contents of her application were accurate and truthful, and she signed the application in Court, indicating that it was truthful and accurate, and that the information contained in the visa application was not truthful, in fact, it was deliberately, she deliberately presented false information to get the visa.

The respondent states that she was persecuted in China under two grounds: One, for her religious activities and, secondly, for her violation of the one child per couple family planning policy. The respondent indicated that she organized underground churches and that on one occasion while she was on a lunch break, people came to her house, arrested her and she was held in detention for 15 days and she was not given food. The respondent indicated that she did not know that it was illegal to hold these services. She also indicated that she belonged to a Christian church. She did not name any denomination and it was unclear whether she thought it was a Mormon church or not, however, she did say that when she arrived in the United States she attended several churches and settled on joining the Mormon church. Her husband was not active in these religious activities according to the respondent and her husband. Her husband came to the United States in February of 1998 and the respondent testified that she was arrested in May of 1998 and that she joined the underground church in 1994, therefore, the husband was aware of these house meetings and he also testified that he did not know that they were illegal. Now the respondent and her husband both lived in the same home, therefore, these religious ceremonies were being held in his home as well as the home of his wife. However, the male respondent testified that he never suffered any form of

persecution for any reason while he was in China.

The female respondent testified that she did not join her husband in 1998 when he came to the United States because her church needed her. Now it should be noted that the forced abortion occurred in 1995, in June of 1995, yet the respondent stayed on in China, she continued working for her company and when she had an opportunity, it appears, to leave with her husband, she chose to remain behind to work for her church. She testified that when she arrived in the United States, she worked for her church by sending documents back to China. It appears to this Court that she could have joined her husband, could have left China because of the coerced abortion and she could have still helped her church from the United States as she alleges she did when she arrived in the United States.

With respect to the husband, the husband testified that he was never persecuted because of the coercive family planning policy. But despite the fact that his wife had a second pregnancy and was forced to undergo an abortion, he never suffered any consequences based on that second pregnancy. He testified that the woman is the one who is usually penalized and fined. The Court would have to note in this case that throughout this country there are thousands of applications filed from the People's Republic of China based on the family planning policy. The overwhelming majority of these applications come from male respondents. This can be (indiscernible) statistically. This is the first time the Court has ever heard a man say that because his wife was pregnant, he did not suffer, even though his wife was pregnant and even though he was the father of the child, that he was not penalized, that the work unit of the wife never contacted his work unit to inform them that he, too, was in violation of the family planning policy. It takes two people to create a pregnancy. The Court has never

heard a male respondent say that only the female suffers and that only the female is required to pay the fine. It should be noted that the female respondent in this case, that the fine was paid by her husband and her husband said the fine was paid by the wife. So there you have an inconsistency in both, part of his claim. The male respondent did not lose his job because of the violation of the family planning policy. He was able, not only was he not penalized, he was rewarded by being sent by his company to the United States to receive training in his field, additional training in his field. It should be noted that he stated earlier that these religious services were held in his home and while he was not a member of the church, he allowed these services to be held in his home and he was not penalized because of the religious services. This is his own testimony. Therefore, there is a very strange inconsistency in this respondent's, in the two respondents' testimony. The Court finds it inconceivable that the male respondent would not have been questioned or penalized because of the violation of the family planning policy. As stated earlier, there are thousands of cases. The Courts around the country see thousands of these cases and in the overwhelming majority of the cases, the male has admitted that he has been penalized because of his wife's pregnancy. When the Court considers the testimony of both respondents, and then when the Court also considers the letter from Jim Levy indicating that the documents that the female respondent submitted in support of her application were counterfeits or fraudulent, the Court can understand why the male respondent was never penalized or never suffered any persecution in the People's Republic of China because, in fact, the Court believes that the female did not undergo a coercive abortion, nor was she ever detained for holding church services in her house. It should also be

noted that the Court could observe both respondents when they were testifying. The male respondent was not in the courtroom when the female respondent testified. However, when it was the male's turn to testify, as he was responding to questions, the female, through her body language, indicated that she was upset with his answers and at that point the male would then become very vague in his responses, indicating that he was not sure, or that he could not remember, et cetera. He was getting non-verbal feedback from his wife while he was attempting to answer the questions. The male respondent indicated that he never saw the abortion certificate in China and then he said he could not recall when he saw the abortion certificate. The Court finds his testimony totally incredible. If, in fact, the wife underwent an abortion in China and was issued a certificate as she indicated, discuss the abortion with her husband, the Court finds her testimony incredible that she did not show him the abortion certificate in China. With respect to the abortion certificate, after warning the respondent about the consequences of filing a frivolous application, the Court then again asked the respondent questions regarding the abortion certificate. Respondent's attorney had initially indicated that the abortion certificate was sent to his client and that she was not clear of the origin of the abortion certificate. So the Court specifically asked the respondent questions regarding the origin of the certificate. The female respondent informed the Court that she was presented that abortion certificate in person by the doctor after her abortion and that this abortion certificate was in her possession, in her home, that is, in a closet, and that after arriving in the United States she had a friend obtain or retrieve this certificate from her home and have the certificate mailed to her in the United States. But the certificate that Mr. Levy found, that Consul Levy found to

be counterfeit, was in fact the certificate that was issued to her by the doctor at the time of the abortion. Therefore, in terms of a chain of custody, the respondents made it quite clear that she was aware of the origin of this certificate and it had been in her possession until she left China and, in fact, admitted that this was, in fact, the certificate, when shown the certificate in Court, she insisted that this was the certificate that the doctor issued to her and this was the same certificate that was sent to the American Embassy for authentication and which was determined to be counterfeit and fraudulent. Therefore, the respondent's own evidence totally contradicts her testimony.

The attorney for the respondent objected to the letter from Consul Levy being admitted into evidence stating that the letter was hearsay. The Court reminded the respondent that it was upon his request that the certificate be authenticated and that had the letter been favorable to his client, he would not objected on the basis of hearsay. The Court, therefore, overruled the attorney's objection to the letter being admitted. The Court finds in this case that Consul Levy has no reason to lie to the Court regarding the authenticity of this document. If this document was authentic, the Court believes that Consul Levy would have indicated that it was authentic. When deciding who in this case would benefit from submitting fraudulent documents, the Court can only find that the respondent would benefit and not Mr. Levy and, therefore, the Court finds that Mr. Levy's letter to be a true and accurate reflection of the background check made on the document and the document was admitted into the record over the objection of respondents' counsel. With respect to the detention letter, which again both the male respondent knew little or nothing about as the female respondent conveniently indicated that she was detained after her husband came to

the United States, that letter was also, that document was also found to be fraudulent. So that the documents the respondent was using to support her claim were both found to be counterfeit and/or fraudulent and, therefore, the Court can only find that the respondent was incredible in her testimony. See Matter of O-D-, Int. Dec. 3334 (BIA 1998), which states, an adverse credability finding can be based on inconsistent statements and fraudulent documents. In this case, the two respondents testified inconsistently and the documents were found to be fraudulent.

Since the respondent was advised of the consequences of knowingly filing a frivolous application and given plenty of opportunity to retract her statements and withdraw her application, the respondent insisted on going forward on the application, she insisted that the application was truthful and accurate. She insisted that the abortion document was personally served on her by the doctor in the hospital where the abortion was performed and that the document has been in her possession and was not fraudulent. The Court can only find that the respondent's testimony was incredible, the testimony of her husband was incredible. As stated earlier, the Court had the opportunity to observe both respondents as they testified. The Court could observe the female respondent's reactions to her husband's answers, especially when his answers did not coincide with hers. And since the respondent's own documents contradict her claim of persecution, and since the respondent had been advised of the consequences of filing a frivolous application, the Court finds that the respondent's application for asylum was, indeed frivolous and, therefore, the respondent should suffer the consequences of filing a frivolous application for asylum. It should also be noted that the husband seemed very uncomfortable in testifying. He seemed to want to

please his wife and, therefore, very often when asked a question would respond, I trust my wife and so if she says that this document is genuine, I must believe her. This was his way of avoiding actually answering questions directly. His answers, whenever he was asked questions regarding fraudulent documents, he always responded by saying that he trusted his wife and that if she said the asylum application was accurate, then it was accurate. If she stated that the documents were genuine, then they must be genuine. He never answered directly that he believed that the documents were genuine, he never testified that he believed that the asylum application was accurate and truthful. It also should be noted that he did not admit that the documents were fraudulent as well.

Accordingly, the following orders are hereby entered:

ORDERS

IT IS HEREBY ORDERED that the application for asylum for the respondent Chunli Wu be denied.

IT IS FURTHER ORDERED that the application for withholding of removal to the People's Republic of China of Chunli Wu be denied.

IT IS FURTHER ORDERED that request for relief under the U.N. Convention Against Torture Act for the respondent Chunli Wu be denied.

IT IS FURTHER ORDERED that the application for voluntary departure for the respondent Chunli Wu be denied.

IT IS FURTHER ORDERED that the respondent Chunli Wu be removed from the United States to her country of citizenship, People's Republic of China, on the charge contained in the Notice to Appear.

With respect to the child, Dian Ding, the following orders are being entered:

ORDERS

IT IS HEREBY ORDERED that the application for asylum for respondent Dian Ding be denied as it is related, as he is included in his mother's application.

ORDERS

IT IS HEREBY ORDERED that the application for asylum for Xiaojian Ding be denied.

IT IS FURTHER ORDERED that the application for withholding of removal to the People's Republic of China for the respondent Xiaojian Ding be denied.

IT IS FURTHER ORDERED that relief under the U.N. Convention Against Torture Act for respondent Xiaojian Ding be denied.

IT IS FURTHER ORDERED that the application for voluntary departure, Xiaojian Ding, be denied.

IT IS FURTHER ORDERED that the respondent Xiaojian Ding be removed from the United States to the People's Republic of China on the charge contained in the Notice to Appear.

IT IS FURTHER ORDERED that the respondent Dian Ding be removed from the United States to the People's Republic of China on the charge contained in his Notice to Appear.

s/ Rosalind Malloy
ROSALIND K. MALLOY
U.S. Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before ROSALIND K. MALLOY, in the matter of:

CHUNLI WU
A 75 654 696
Los Angeles, California

was held as herein appears, and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

s/ Tracy Hahn
Tracy Hahn, Transcriber

Deposition Services, Inc.
6245 Executive Boulevard
Rockville, Maryland 20852
(301) 881-3344

June 11, 2001
(Completion Date)

IMMIGRATION COURT
606 SOUTH OLIVE ST. 15TH FLOOR
LOS ANGELES, CA 90014

In the Matter of

Case No.: A75-654-696

WU, CHUNLI
Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Dec 5, 2000. This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[X] The respondent was ordered removed from the United States to THE PEOPLES REPUBLIC OF CHINA or in the alternative to

[X] Respondent's application for voluntary departure was denied and respondent was ordered removed to THE PRC
alternative to

[ ] Respondent's application for voluntary departure was granted until
upon posting a bond in the amount of $_____
with an alternate order of removal to

[X] Respondent's application for asylum was
( ) granted (X) denied ( ) withdrawn

[X] Respondent's application for withholding of removal was ( ) granted (X) denied
( ) withdrawn _____

[ ] Respondent's application for cancellation of

removal under section 240(a) was ( ) granted ( ) denied ( ) withdrawn or ( ) other

[ ] Respondent's application for cancellation of removal was ( ) granted under section 240A(b)(1) ( ) granted under section 240A(b)(2) ( ) denied ( ) withdrawn. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Respondent's application for a waiver under section of the INA was ( ) granted ( ) denied ( ) withdrawn

[ ] Respondent's application for adjustment of status under section of the INA was ( ) granted ( ) denied ( ) withdrawn. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Respondent's status was rescinded under section 246.

[ ] Respondent is admitted to the United States as a _____ until _____.

[ ] As a condition of admission, respondent is to post a $_____ bond.

[X] Respondent knowingly filed a frivolous asylum application after proper notice.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

[ ] Proceedings were terminated.

[X] Other: U.N. CAT DENIED

Date: Dec 5, 2000

Appeal Reserved Appeal Due By: JAN 4, 2001

s/ Rosalind Malloy

ROSALIND K. MALLOY

U.S. Immigration Judge

IMMIGRATION COURT
606 SOUTH OLIVE ST. 15TH FLOOR
LOS ANGELES, CA 90014

In the Matter of

Case No.: A75-654-698

DING, XIAOJIAN
Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Dec 5, 2000. This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[X] The respondent was ordered removed from the United States to THE PEOPLES REPUBLIC OF CHINA or in the alternative to

[X] Respondent's application for voluntary departure was denied and respondent was ordered removed to THE PRC alternative to

[ ] Respondent's application for voluntary departure was granted until
upon posting a bond in the amount of $_____
with an alternate order of removal to

[X] Respondent's application for asylum was
( ) granted (X) denied ( ) withdrawn

[X] Respondent's application for withholding of removal was ( ) granted (X) denied
( ) withdrawn _____

[ ] Respondent's application for cancellation of removal under section 240(a) was ( ) granted ( )

denied ( ) withdrawn or ( ) other

[ ] Respondent's application for cancellation of removal was ( ) granted under section 240A(b)(1) ( ) granted under section 240A(b)(2) ( ) denied ( ) withdrawn. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Respondent's application for a waiver under section of the INA was ( ) granted ( ) denied ( ) withdrawn

[ ] Respondent's application for adjustment of status under section of the INA was ( ) granted ( ) denied ( ) withdrawn. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Respondent's status was rescinded under section 246.

[ ] Respondent is admitted to the United States as a _____ until _____.

[ ] As a condition of admission, respondent is to post a $_____ bond.

[X] Respondent knowingly filed a frivolous asylum application after proper notice.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

[ ] Proceedings were terminated.

[X] Other: U.N. CAT DENIED

Date: Dec 5, 2000

Appeal Reserved Appeal Due By: JAN 4, 2001

s/ Rosalind Malloy

ROSALIND K. MALLOY

U.S. Immigration Judge

IMMIGRATION COURT
606 SOUTH OLIVE ST. 15TH FLOOR
LOS ANGELES, CA 90014

In the Matter of

Case No.: A75-654-697

DING, DIAN
Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Dec 5, 2000. This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[X] The respondent was ordered removed from the United States to THE PEOPLES REPUBLIC OF CHINA or in the alternative to

[X] Respondent's application for voluntary departure was denied and respondent was ordered removed to THE PRC alternative to

[ ] Respondent's application for voluntary departure was granted until
upon posting a bond in the amount of $_____
with an alternate order of removal to

[X] Respondent's application for asylum was
( ) granted (X) denied ( ) withdrawn

[X] Respondent's application for withholding of removal was ( ) granted (X) denied
( ) withdrawn _____

[ ] Respondent's application for cancellation of removal under section 240(a) was ( ) granted ( )

denied ( ) withdrawn or ( ) other

[ ] Respondent's application for cancellation of removal was ( ) granted under section 240A(b)(1) ( ) granted under section 240A(b)(2) ( ) denied ( ) withdrawn. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Respondent's application for a waiver under section of the INA was ( ) granted ( ) denied ( ) withdrawn or ( ) other.

[ ] Respondent's application for adjustment of status under section of the INA was ( ) granted ( ) denied ( ) withdrawn. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Respondent's status was rescinded under section 246.

[ ] Respondent is admitted to the United States as a _____ until _____.

[ ] As a condition of admission, respondent is to post a $_____ bond.

[X] Respondent knowingly filed a frivolous asylum application after proper notice.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

[ ] Proceedings were terminated.

[X] Other: U.N. CAT DENIED

Date: Dec 5, 2000

Appeal Reserved Appeal Due By: JAN 4, 2001

s/ Rosalind Malloy
ROSALIND K. MALLOY
U.S. Immigration Judge